

ORDINANCE NO. 3855

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, CONCERNING THE ADOPTION OF RESPONSIBLE BIDDER CRITERIA FOR CERTAIN CITY CAPITAL CONSTRUCTION PROJECTS; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the State of Washington enacted RCW 39.04.350 to set forth the mandatory bidder responsibility criteria for the award of public works construction contracts, and to authorize municipalities to adopt supplemental bidder responsibility criteria; and

WHEREAS, the City of Edmonds (the "City") wishes to clarify the rights and responsibilities of the City's Public Works Department in determining the lowest responsible bidder for awarding the City's public works construction contracts, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN
AS FOLLOWS:

Section 1. Amended. ECC 18.00 Public Works Requirements, General

Requirements is hereby amended to add the following section, to read as follows:

18.00.060 Responsible Bidder Criteria.

This section is intended to supplement, and to be followed in conjunction with, the City of Edmonds Purchasing Policies and Procedures, dated January 2009, or as amended.

A. Mandatory responsible bidder criteria.

1. The bidder responsibility criteria set forth in this section shall be used by the Public Works Department to establish the minimum requirements for all contractors and subcontractors bidding on City contracts for public work (as those terms are defined in RCW 39.04.010). The bid documents shall set forth the documentation to be submitted by bidders to demonstrate their compliance with the mandatory responsible bidder criteria.

2. To be considered a responsible bidder and qualified to be awarded a City contract for public work, the bidder must:

- (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW (contractor registration);
- (b) Have a current state unified business identifier (UBI) number;
- (c) If applicable, have:
 - (i) industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW;
 - (ii) a state employment security department number as required in Title 50 RCW; and
 - (iii) a state excise tax registration number as required in Title 82 RCW;
- (d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3); and
- (e) Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the State Department of Labor and Industries.

3. A bidder must verify mandatory responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify mandatory responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and ECC 18.00.060 and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the mandatory responsibility criteria, must be included in every public works contract and subcontract of every tier.

B. Supplemental responsible bidder criteria.

1. In addition to the mandatory bidder responsibility criteria set forth in ECC 18.00.060 (A), the Public Works Department may adopt in connection with a particular project relevant supplemental bidder responsibility criteria which the bidder must meet. Those supplemental criteria, including the basis for evaluation and the deadlines for requesting modification of the supplemental bidder responsibility criteria and for appealing a determination that a low bidder is not

responsible under the supplemental bidder responsibility criteria, shall be provided in the invitation to bid or bidding documents.

2. As relevant to a particular project, supplemental bidder responsibility criteria may be included to require that:

- (a) The bidder shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue;
- (b) The bidder shall not currently be debarred or suspended by the federal government;
- (c) The bidder shall have complied with minority and women's business enterprises, disadvantaged business enterprises, or other similar utilization requirements or goals on federally-funded public works projects with such requirements completed by the bidder within three years of the bid submittal date, unless there are extenuating circumstances acceptable to the City;
- (d) The bidder shall not be listed as an ineligible contractor on the federal GSA Excluded Parties List System set forth by 31 U.S.C § 6101 and Executive Order 13496;
- (e) If bidding on a public works project subject to the apprenticeship utilization requirements in ECC 18.00.050, the bidder:
 - (i) shall not have been found out of compliance with apprenticeship requirements of ECC 18.00.050 unless otherwise excepted or waived in writing by the Mayor or the Mayor's designee pursuant to that section for a one-year period immediately preceding the date of the bid submittal deadline; and
 - (ii) shall have complied with apprenticeship utilization goals on public works projects having such requirements that were completed by the bidder within a three-year period immediately preceding the date of the bid submittal deadline, unless there are extenuating circumstances acceptable to the City;
- (f) The bidder shall not have been convicted of a crime involving bidding on a public works contract within five years from the bid submittal deadline;
- (g) The bidder's standard subcontract form shall include the subcontractor responsibility language required by RCW 39.06.020, and the bidder shall have an established procedure which it utilizes to validate the

responsibility of each of its subcontractors. The bidder's subcontract form shall also include a requirement that each of its subcontractors shall have and document a similar procedure to determine whether the sub-tier subcontractors with which it contracts are also "responsible" subcontractors as defined by RCW 39.06.020;

- (h) The bidder shall not have a record of excessive claims filed against the retainage or payment bonds for public works projects during the previous three years that demonstrate a lack of effective management by the bidder of making timely and appropriate payments to its subcontractors, suppliers, and workers, unless there are extenuating circumstances acceptable to the City;
- (i) The bidder shall have successfully completed projects of a similar size and scope as required by the contract documents for the project. In evaluating whether projects were successfully completed, the City may check owner references for previous projects and evaluate the owner's assessment of bidder performance, including but not limited to quality control, safety record, timeliness of performance, use of skilled personnel, management of subcontractors, availability of and use of appropriate equipment, compliance with contract documents, and management of submittals process, change orders and close-out;
- (j) The bidder shall not have had any public works contract terminated for cause by a government agency during the five year period immediately preceding the bid submittal deadline for the project, unless there are extenuating circumstances acceptable to the City;
- (k) The bidder shall not have judgments entered by a court of law against the bidder within five years of the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances acceptable to the City; and
- (l) The bidder shall not have a documented pattern of prevailing wage complaints filed against it within five years of the bid submittal date that demonstrates a failure to pay workers prevailing wages, unless there are extenuating circumstances acceptable to the City.

3. Supplemental bidder responsibility criteria may include any other criteria determined by the City to be relevant to the particular project being bid, including but not limited to the ability, capacity and skill of the bidder to perform, the experience and efficiency of the bidder, the financial situation of the bidder, and the performance of the bidder on previous contracts or services.

4. In a timely manner before the bid submittal deadline, a potential bidder may request that the City modify the supplemental bidder responsibility criteria. The

City must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the City must publish an addendum to the bidding documents identifying the modified criteria.

5. If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the City may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

6. If the City determines a bidder to be not responsible, the City must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the City. The City must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the City may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

7. The invitation to bid or bidding documents shall specify the times, manner and means of communications, deadlines and determinations required by this section.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:


MAYOR MIKE COOPER

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
JEFFREY B. TARADAY

FILED WITH THE CITY CLERK:	09-16-2011
PASSED BY THE CITY COUNCIL:	09-20-2011
PUBLISHED:	09-25-2011
EFFECTIVE DATE:	09-30-2011
ORDINANCE NO. <u>3855</u>	

SUMMARY OF ORDINANCE NO. 3855


of the City of Edmonds, Washington

On the 20th day of September, 2011, the City Council of the City of Edmonds, passed Ordinance No. 3855. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, CONCERNING THE ADOPTION OF RESPONSIBLE BIDDER CRITERIA FOR CERTAIN CITY CAPITAL CONSTRUCTION PROJECTS; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

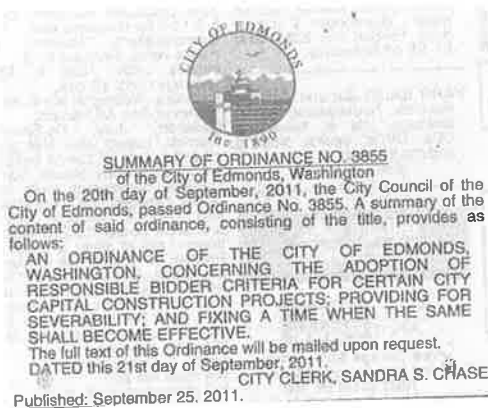
DATED this 21st day of September, 2011.


CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.



The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3855

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

September 25, 2011

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Stoll

Principal Clerk

Subscribed and sworn to before me this

day of September, 2011

[Signature]

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

